

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 3976 OF 2022.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Nazimul Haque and others.

....Plaintiff-petitioners.

-Versus –

Md. Didarl Haque Kazemi and others.

....Defendant-opposite parties.

Mr. Md. Ishaque Miah, Advocate.

..... For the petitioners.

No one appears.

..... For opposite parties.

Heard on: 13.05.2024 and Judgment on 19.05.2024.

On an application of the petitioners Nazimul Haque and others under section 115 (1) of the Code of Civil Procedure the Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned order No. 20 dated 20.06.2022 passed by the learned Additional District Judge, 7th Court, Chattogram in Other Appeal No. 75 of 2019 rejecting the application for addition of party filed by the petitioners should not be set aside.

Facts necessary for disposal of the Rule, in short, is that the present petitioner and the opposite party No.1 Md. Didarl Haque Kazemi filed Title Suit No. 258 of 2006 in the court of Assistant Judge, 5th Court, Chattogram

for declaration of title, confirmation of possession and permanent injunction.

After filing the suit on an application of the plaintiff No. 2 the present opposite party No.1 the name of the plaintiff No.1 and 3-9 were transposed as defendants by the order of the trial court dated 26.10.2011. But no information or notice was served upon them. Even the plaintiff No.2, did not take initiative to inform the said facts to the petitioners.

Thereafter the trial court dismissed the suit by its judgment and decree dated 22.07.2018.

Against the said judgment and decree the opposite party No.2 as appellant preferred Other Appeal No. 75 of 2019 against the defendant Nos. 1-8 and also inserted the name of the petitioner as proforma respondent Nos. 9-16.

Subsequently the present petitioners came to know the result of the title suit and the aforesaid appeal then they filed an application before the appellate court for inserting them as appellants in the aforesaid appeal on 04.01.2021.

The appellate court after hearing the parties and considering the facts and circumstances of the case rejected the said application on 15.06.2022.

Being aggrieved by and dissatisfied with the impugned order of the appellate court the present petitioner filed this revisional application and obtained the Rule.

Mr. Md. Ishaque Miah, Advocate appearing on behalf of the present petitioners submits that the opposite party No.1 and the present petitioners as plaintiffs instituted title suit but subsequently without any notice or without informing the present petitioner the plaintiff No.2 filed application for transposed of the plaintiff No.1 and the plaintiff Nos. 3-9 as defendants. The trial court without issuing any notice upon the present petitioners allowed the said application and transposed of the present petitioners as defendant Nos. 17-27. He further submits that the plaintiff No.2 himself proceeded the suit but ultimately the suit was dismissed against the defendant Nos. 7-8 on contest and ex-parte against the other though he examined four witnesses as P.W.s and also Exhibited a series of documents. He further submits that thereafter the plaintiff No. 2 without informing the present petitioners preferred Other Appeal No. 75 of 2019 wherein he inserted the present petitioners as respondent Nos. 17-24. The learned Advocate submits that since all the plaintiffs filed suit for protection of their paternal property with a prayer for declaration of title, confirmation of possession as well as permanent injunction thus all the plaintiffs have right and interest of the suit land but the plaintiff No.2 fraudulently transposed the other plaintiffs as defendants even no proper notice was served upon them thus they could not know the result of the case and as such the right of the present petitioner has been seriously affected. He submits that the defendant No.2 as plaintiff fraudulently preferred appeal inserting the name of the present petitioner as proforma

respondents whereas the present petitioners have right and title over the suit land and they were the plaintiffs of the original suit but the appellate court without considering the said material facts of the case erroneously passed the impugned order. He prayed for making the Rule absolute.

I have heard the learned Advocate of petitioner, perused the impugned order of the courts below and the papers and documents as available on the record.

The facts is that the opposite party No.1 as well as the present petitioner and their mother as plaintiffs filed title suit before the trial court. But it appears that on an application of the plaintiff No.2 all the other plaintiffs were transposed as defendants. It appears that since no proper notice was served upon them thus they could not know the aforesaid facts as well as the judgment and decree of the trial court. It also appears that said plaintiff No.2 as appellant preferred the appeal wherein also inserted the name of the present petitioners as proforma respondents and after came to know the facts that they were transposed as respondents. It also appears that the said suit was decreed ex-parte against the present opposite party No.1. From the aforesaid facts, it is clear that no summons was served upon them and they did not contest the suit and subsequently came to know that the appeal preferred by the plaintiff No.2 without informing them anything thus they filed this application to transposed them as appellants instead of respondents. But it appears that the appellate court without considering the said facts

passed the impugned order which he committed error in law resulting in an error in the decision occasioning failure of justice. The learned Advocate submits that if the application of the petitioner is not allowed then the petitioners will suffer irreparable loss and injuries since their right was affected by the impugned judgment.

Considering the aforesaid facts and circumstances of the case and the discussions as made above I find merit in the Rule.

In the result the Rule is made absolute. The impugned order No. 20 dated 20.06.2022 passed by the learned Additional District Judge, 7th Court, Chattogram in Other Appeal No. 75 of 2019 is hereby set-aside. The petitioners should be treated as appellant Nos. 2-9 of the appeal.

The appellate court is directed to dispose of the appeal amending the cause title of the appeal. The appellate court is directed to dispose of the appeal in accordance with law giving the parties to prove this case.

Communicated the order at once.